IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.801 OF 2005
IN
COMPANY APPLICATION NO.620 OF 2005

In the matter of Sections 391 and 392 read with Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of the Scheme of Arrangement between Kalyani Thermal Systems Limited and Equity Shareholders of Kalyani Thermal Systems Limited.

Kalyani Thermal Systems Limited).. Petitioner

Mr.Hemant Sethi for the Petitioner.

Mr.C.J.Joy with Mr.Mahesh Dutt and Mr.P.Sharma i/b.Dr.T.C.Kaushik for the Regional Director.

CORAM : SMT. NISHITA MHATRE, J.

DATED: 23RD DECEMBER 2005

P.C.:

. This is a Petition to obtain sanction to the proposed Scheme of Arrangement under Sections 391 and 392 read with Sections 100 to 1003 of the Companies Act, 1956 and its equity share holders. The Regional Director, Western Region, Ministry of Company Affairs, has filed an affidavit to oppose the Scheme on the ground that the procedure under Sections 391 read with 392 is being adopted even though there is separate Section 77A(1) of the Companies Act, 1956 which provides for buy back of

shares. The Regional Director has raised this objection despite the judgment of the Division Bench of this Court in the case of *Securities and Exchange Board of India* vs. *Sterlite Industries (India) Ltd.*, **(2003 53 CLA 41 (Bombay)**. An Appeal has been filed against this decision in the Supreme Court by the Regional Director. However, there is no stay of the operation of the judgment of the Division Bench. Therefore, the Division Bench judgment still holds the field. This objection raised by the Regional Director, in my view, need not be entertained. There is no other objection raised.

2. Petition allowed in terms of prayers (a) to (c), subject to payment of costs to the Regional Director quantified at Rs.2,500/- (Rupees Two Thousand Five Hundred only).

3. All concerned parties including concerned Registrar of Companies to act on the ordinary copy of the Order and Scheme annexed to the Petition, authenticated by the Company Registrar, High Court, Bombay.

4. Filing of drawn up order is dispensed with.